

REMARKS

This Application has been reviewed in light of the Office Action mailed March 11, 2005. Claims 1-31 have been elected for prosecution and Claims 32-35 have been canceled. Claims 1-31 were rejected in the Office Action. Claims 1, 15, 17, and 22-27 have been amended to further clarify the claimed subject matter. Applicants respectfully request reconsideration and allowance of Claims 1-31.

In the Specification:

The Examiner objects to the specification as containing an informality. Applicants have amended the specification as suggested by the Examiner. Therefore, reconsideration and favorable action are requested.

Election Restriction

In a telephone conversation with the Examiner on February 22, 2005, Applicants made a provisional election without traverse to prosecute the invention of Group I, Claims 1-31. Applicants hereby affirm the election and cancel Claims 32-35 without prejudice or disclaimer. Applicants reserve the right to file a divisional application which presents the subject matter of Claims 32-35 on the merits.

Double Patenting

Claims 1-13 and 17-31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 10-42 of copending Patent Application No. 10/039,051. As this is a provisional double patenting rejection, Applicants defer the decision to file a terminal disclaimer or traverse the rejection until the Examiner has indicated that both the present Application and copending Patent Application No. 10/039,051 include allowable subject matter.

Section 101 Rejections

Claims 22-26 are rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. While Applicants respectfully disagree that "logic encoded in media" reads

on non-statutory subject matter, Applicants have amended Claims 22-26 to advance prosecution of the present application. Specifically, Applicants have amended independent Claim 22, from which Claims 23-26 depend, to recite "Computer readable media encoded with logic."

Section 112 Rejections

Claim 15 is rejected under 35 U.S.C. §112, second paragraph, as having insufficient antecedent basis. Applicants have amended Claim 15 as suggested by the Examiner.

Claims 2, 18, 23, and 28 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants respectfully traverse this rejection.

M.P.E.P. §2173.02 states that the test for definiteness is:

Definiteness of claim language must be analyzed, not in a vacuum, but in light of:

- (A) The content of the particular application disclosure;
- (B) The teachings of the prior art; and
- (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

Applicants respectfully submit that one possessing the ordinary level of skill in the pertinent art would know what is meant by periodically transmitting the console information to the console server. Furthermore, the specification of the present application provides further context:

In accordance with a particular embodiment of the present invention, memory module 66 may be configured to "poll" consoles 36-39 and/or memory modules 45-48 periodically, in order to collect and/or store real-time and/or historical console information associated with computing devices 32-35. In a particular embodiment, console server 50 communicates with one or more of computing devices 32-35, at predetermined time intervals, to collect real-time and/or historical console information.

Application page 15, line 31 to page 16, line 8. The specification further states that:

In another embodiment, all console information regarding server processing cards 32-35 and/or management interface card 124, are collected at a single device, for example, server processing card 32 or management network

interface card 124. In this embodiment, console server 50 communicates with server processing card 32 or management network interface card 124 periodically to collect all console information regarding server processing cards 32-35 and/or management network interface card 124.

Application page 23, lines 10-19.

Applicants further submit that the claim language in question is not indefinite simply because the Examiner can provide more than one example of situations fitting the claim language. That is to say, broad claim language does not equate to indefiniteness. *See* M.P.E.P. § 2173.04. For at least these reasons, Applicants respectfully submit that Claims 2, 23, and 28 particularly point out and distinctly claim the subject matter regarded by the Applicants as the invention. Therefore, reconsideration and favorable action are requested.

Section 102 Rejections

Claims 1-2, 4-8, 10-12, 17-20, 22-25, and 27-30 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,167,358 issued to Othmer et al. ("*Othmer*"). Applicants respectfully disagree with this rejection.

Claim 1 is directed to a system including a plurality of computing devices, each computing device having a respective console, and a respective console interface, the respective consoles enabling manual control of the plurality of computing devices. *Othmer*, on the other hand, discloses a system for monitoring the operation of a plurality of computer based systems connected to a server. *See Othmer*, Abstract. The Examiner does not specify which component of *Othmer* satisfies the claim element of a console, instead relying on inherency. *See* Office Action, page 13. Applicants note that "[i]n relying on the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (*emphasis in original*); M.P.E.P. § 2112. The mere fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *See In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir.

1993). The Office Action fails to provide the required basis in fact or technical reasoning to support a rejection based on inherency.

In addition, as indicated above Claim 1 recites the respective consoles enabling manual control of the plurality of computing devices. *Othmer*, on the other hand, discloses a passive nub that “gathers information about the operation and execution of a software application being executed by the computer-based system or about the operation of the microprocessor within the computer-based system” *Othmer*, column 4, lines 63-66. No component of *Othmer* enables manual control of the plurality of computing devices. For at least these reasons, Applicants respectfully submit that Claim 1 is patentably distinguishable from the cited portions of *Othmer* and request that the rejection of Claim 1 be withdrawn.

Claims 17, 22, and 27 each include similar limitations to those discussed above regarding Claim 1. Claims 2, 4-8, and 10-12 depend from Claim 1, Claims 18-20 depend from Claim 17, Claims 23-25 depend from Claim 22, and Claims 28-30 depend from Claim 27. For at least these reasons, Applicants respectfully submit that Claims 2, 4-8, 10-12, 17-20, 22-25, and 27-30 are patentably distinguishable from the cited portions of *Othmer* and request that the rejection of Claims 2, 4-8, 10-12, 17-20, 22-25, and 27-30 be withdrawn.

Section 103 Rejections

Claims 3 and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Othmer* and the Examiner's Official Notice. Claims 3 and 9 depend from Claim 1 and are therefore believed to be patentable for the same reasons as those discussed above regarding Claim 1.

In addition, Claims 13, 21, 26, and 31 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Othmer* and U.S. Patent No. 6,609,213 issued to Nguyen ("*Nguyen*"). Claim 13 depends from Claim 1, Claim 21 depends from Claim 17, Claim 26 depends from Claim 22, and Claim 31 depends from Claim 27. Therefore, Claims 13, 21, 26, and 31 are believed to be patentable for the same reasons as those discussed above regarding Claims 1, 17, 22, and 27.

Further, Claims 14-15 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Othmer* and U.S. Patent Publication No. 2002/0124128 issued to Qiu ("*Qiu*"). Applicants respectfully traverse this rejection for the reasons stated below.

Claim 14 is directed to a server chassis including a plurality of server processing cards, each server processing card including a respective console and a respective console interface. Each console interface is operable to transmit console information associated with the respective console. A console server is coupled for communication with the plurality of server processing cards and includes a memory module operable to receive and store at least a portion of the console information.

To obviate Claim 14, the Examiner relies on an improper combination of *Othmer* and *Qiu*. To support the combination, the Examiner states: "[i]t would have been obvious to one of ordinary skill in the art at the time of invention to modify *Othmer*'s system to house multiple computing devices (server processing cards) within a single server chassis as disclosed by *Qiu*, since such a design is reliable, versatile, and economical." See Office Action, page 18. This does not provide a proper motivation to combine the disclosures of *Qiu* with the specific system of *Othmer*. The relied upon portion of *Qiu* amounts to nothing more than a statement in *Qiu* of the desirability of constructing the invention disclosed by *Qiu*. Moreover, *Othmer* discloses that the "invention is particularly applicable to a system and method for monitoring a software application or a microprocessor on a distributed set of client computers" *Othmer*, column 4, lines 19-21. Therefore, *Othmer* specifically teaches away from use on multiple computing devices residing in a single chassis. For at least these reasons, Applicant respectfully contend that the combination of *Othmer* and *Oiu* is improper and request that the rejection of Claim 14 be withdrawn.

Claim 15 depends from Claim 14. Therefore, Applicants respectfully request that the rejection of Claim 16 be withdrawn for the same reasons as those discussed above regarding Claim 14.

Further, Claim 16 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Othmer* and *Qiu* and further in view of U.S. Patent No. 6,408,334 issued to Bassman

("Bassman"). Claim 16 depends from Claim 14. As discussed above with regard to Claim 14, the combination of *Othmer* and *Qiu* is improper. Therefore, Applicants respectfully request that the rejection of Claim 16 be withdrawn for the same reasons as those discussed above regarding Claim 14.

CONCLUSION

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Luke K. Pedersen, Attorney for Applicants, at the Examiner's convenience at (214) 953-6511.

No fee is believed to be due. However, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

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